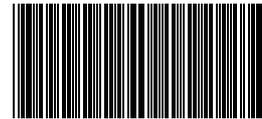




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Commercial List Response

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2018/00076580

TITLE OF PROCEEDINGS

First Plaintiff	Giabal Pty Ltd
Second Plaintiff	Geoffry Underwood
First Defendant	Gunns Plantations Limited (in Liquidation)
Second Defendant	Gunns Limited (in Liquidation)(Receivers & managers Appointed)
Number of Defendants	11

TITLE OF THIS CROSS-CLAIM

First Cross Claimant	John Eugene Gay
First Cross Defendant	Gunns Plantations Limited (in Liquidation)
Second Cross Defendant	Gunns Limited (in Liquidation)(Receivers & managers Appointed)
Number of Cross Defendants	10

FILING DETAILS

Filed for	Andrew Gray, Cross Defendant 9 Mathew Gary Wallace, Cross Defendant 10
Filed in relation to	Cross-Claim 4
Legal representative	ROSS JAMES DRINNAN
Legal representative reference	
Telephone	02 9230 4000
Your reference	120709959

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Commercial List Response (KPMG - Commercial List Cross-Claim Response to Fourth Cross-Claim.pdf)

[attach.]

**FOURTH CROSS-CLAIM
COMMERCIAL LIST CROSS-CLAIM RESPONSE**

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2018/00076580

TITLE OF PROCEEDINGS

First Plaintiff	Giabal Pty Ltd
Second Plaintiff	Geoffry Underwood
First Defendant	Gunns Plantations Limited (in Liquidation)
Number of defendants	11

TITLE OF THIS FOURTH CROSS-CLAIM

Cross-Claimant	John Eugene Gay (Fourth Defendant)
First Cross-Defendant	Gunns Plantations Limited (in Liquidation) (First Defendant)
Number of Cross-Defendants	10

FILING DETAILS

Filed for	Andrew Gray , Ninth Cross-Defendant Matthew Wallace , Tenth Cross-Defendant
Legal representative	Ross Drinnan Allens
Legal representative reference	18917
Contact name and telephone	Ross Drinnan (02) 9230 4931
Contact email	Ross.Drinnan@allens.com.au

PRELIMINARIES

- A Headings are used in this document (**Cross-Claim Response**) for convenience only. They do not form part of the Ninth and Tenth Cross-Defendants' response to the Fourth Cross-Claim Commercial List Cross-Claim Statement filed by the Cross-Claimant on 30 August 2018 (the **Cross-Claim Statement**).
- B The terms in the Amended Commercial List Statement filed by the Plaintiffs on 6 August 2018 (**ACLS**) and in the Amended Commercial List Response (**KPMG ACLR**) filed by the Ninth and Tenth Cross-Defendants (as Defendants) on 27 August 2018 have the same meaning in this Cross-Claim Response, unless otherwise defined or stated. The Ninth and Tenth Cross-Defendants do not admit any factual assertions contained in, or in any way implied by, any defined term used in the ACLS and repeated in this document.

A NATURE OF DISPUTE

- 1 The Plaintiffs in this representative proceeding have brought claims against 11 Defendants, including the Cross-Claimant and the Ninth and Tenth Cross-Defendants, on behalf of themselves and Group Members, in relation to their investments in the Gunns Woodlot Schemes.
- 2 In his Amended Commercial List Response filed on 30 August 2018 (**John Gay ACLR**), the Cross-Claimant denies that the Plaintiffs or Group Members are entitled to the relief claimed by them against the Cross-Claimant.
- 3 However, for the purposes of the Fourth Cross-Claim only, the Cross-Claimant alleges that if he is liable to the Plaintiffs then the Ninth and Tenth Cross-Defendants are also liable on the basis set out in the Cross-Claim Statement.
- 4 The Ninth and Tenth Cross-Defendants deny that they are liable to the Plaintiffs or to the Cross-Claimant for the reasons set out herein.

B ISSUES LIKELY TO ARISE

The Ninth and Tenth Cross-Defendants agree with the statement of "Issues Likely to Arise" in this Fourth Cross-Claim set out in Part B of the Cross-Claim Statement.

C RESPONSES TO CROSS-CLAIMANT'S CONTENTIONS

1. In answer to paragraph 1, the Ninth and Tenth Cross-Defendants:
 - (a) do not plead to sub-paragraphs (a)-(h), which do not contain any allegations against them, but they do not thereby admit the allegations in those paragraphs;
 - (b) in relation to sub-paragraph (i):
 - (i) as to the pleaded paragraphs from the ACLS, repeat their responses in paragraphs 12-64, 70-78, 86 and 97-103 of the KPMG ACLR;
 - (ii) as to the pleaded paragraphs of the John Gay ACLR, the Ninth and Tenth Cross-Defendants:
 - (A) as to paragraph 12(a), repeat their responses in paragraph 12 of the KPMG ACLR;
 - (B) as to paragraph 12(b)(ii), admit that the Tenth Cross-Defendant was the lead auditor for the audits of Gunns Ltd and its controlled entities, and the audits of GPL's annual accounts, for the 2004-2007 financial years;
 - (C) as to paragraph 12(b)(iii), admit that the Tenth Cross-Defendant was the lead auditor for the audit of Gunns Ltd and its controlled entities for the 2008 financial year;
 - (D) as to paragraph 78(e), repeat their responses in paragraphs 72(j)-(l) and 78 of the KPMG ACLR;
 - (E) as to paragraph 82(h)(iii):
 - (I) say that there was no compliance committee because not less than half of the directors of GPL (as the responsible entity for each Gunns Woodlot Scheme) were external directors as defined in the Act;
 - (II) say further that the board of directors of GPL (**GPL Board**) (which included the Cross-Claimant, during the term of his directorship of GPL) was responsible for monitoring GPL's compliance with the Act, the Constitutions and the compliance plans for each of the Gunns Woodlot Schemes, and the GPL

Board adopted the roles and obligations of the compliance committee in the absence of such a committee being established;

- (III) otherwise admit the allegation in paragraph 82(h)(iii);

Particulars

Original Compliance Plan for each of the 2002, 2003, 2005, 2006 and 2008 Gunns Woodlot Schemes, clauses 8.1-8.2.

Compliance Plan for the 2009 Gunns Woodlot Scheme and Replacement Compliance Plans, clauses 6.1-6.3 and 6.5.

Act, s 601JA(1) and (2).

- (F) as to paragraph 82(h)(vi):

- (I) say that in respect of each financial year that it carried out a compliance plan audit relating to a Gunns Woodlot Scheme from 2003 to the end of the Relevant Period (as that term is defined at paragraph 12(a) of the John Gay ACLR), KPMG (A Firm) would provide GPL with:

- i. a compliance plan audit report for each of the Gunns Woodlot Schemes; and
- ii. a management letter which set out significant matters that had come to the attention of KPMG (A Firm) in respect of the design effectiveness and operational effectiveness of the compliance plans, the recommendations of KPMG (A Firm) in respect of those matters and, where obtained, management's comments and responses to those recommendations;

- (II) otherwise do not admit the allegations in paragraph 82(h)(vi);

Particulars

The particulars to paragraph 12 of the KPMG ACLR are repeated.

The management letters were issued as follows:

- (a) management letter dated 20 February 2004 in relation to the compliance plan audits for the year ended 30 June 2003;*
- (b) draft management letter dated 22 November 2004 in relation to the compliance plan audits for the year ended 30 June 2004;*
- (c) draft management letter dated 14 November 2006 in relation to the compliance plan audits for the year ended 30 June 2006;*
- (d) draft management letter dated 6 November 2007 in relation to the compliance plan audits for the year ended 30 June 2007;*
- (e) draft management letter dated 27 November 2008 in relation to the compliance plan audits for the year ended 30 June 2008;*
- (f) draft management letter dated 26 February 2010 in relation to the compliance plan audits for the year ended 30 June 2009; and*
- (g) management letter dated 1 July 2010 in relation to the compliance plan audits for the year ended 30 June 2009.*

Further particulars may be provided after discovery and evidence.

- (G) as to paragraph 82(h)(vii):
 - (I) repeat their responses in paragraph 72(j)-(l) of the KPMG ACLR;
 - (II) otherwise do not admit the allegations in paragraph 82(h)(vii);
- (H) as to paragraph 82(h)(ix):
 - (I) say that, in respect of each financial year that it carried out an audit of the consolidated financial reports of Gunns Ltd and its controlled entities from 2003 to the end of the Relevant Period, KPMG (A Firm) would prepare an independent audit report, containing its audit opinion on the consolidated financial report of Gunns Ltd, for provision to the members of Gunns Ltd by its inclusion in the Annual Report of Gunns Ltd;

- (II) otherwise do not admit the allegations in paragraph 82(h)(ix);

Particulars

Annual Report of Gunns Ltd for the year ended 30 June 2003

Annual Report of Gunns Ltd for the year ended 30 June 2004

Annual Report of Gunns Ltd for the year ended 30 June 2005

Annual Report of Gunns Ltd for the year ended 30 June 2006

Annual Report of Gunns Ltd for the year ended 30 June 2007

Annual Report of Gunns Ltd for the year ended 30 June 2008

Annual Report of Gunns Ltd for the year ended 30 June 2009

Further particulars may be provided after discovery and evidence.

- (I) as to paragraph 82(h)(x):

- (I) say that, in respect of each financial year that it carried out an audit of the financial report of GPL from 2003 to the end of the Relevant Period, KPMG (A Firm) would prepare an independent audit report, containing its audit opinion on the financial report of GPL, for provision to the members of GPL by its inclusion in the annual financial report of GPL;

- (II) otherwise do not admit the allegations in paragraph 82(h)(x);

Particulars

Annual Financial Report of GPL for the year ended 30 June 2003

Annual Financial Report of GPL for the year ended 30 June 2004

Annual Financial Report of GPL for the year ended 30 June 2005

Annual Financial Report of GPL for the year ended 30 June 2006

Annual Financial Report of GPL for the year ended 30 June 2007

Annual Financial Report of GPL for the year ended 30 June 2008

Annual Financial Report of GPL for the year ended 30 June 2009

Further particulars may be provided after discovery and evidence.

(J) as to paragraph 82(h)(xi):

(I) say that, in performing the audits of the annual financial report of GPL and the consolidated financial report of Gunns Ltd and its controlled entities, KPMG (A Firm) relied upon:

- i. the provision of accurate and complete information and documentation by or on behalf of Gunns Ltd, its controlled entities (including GPL) and the respective directors and officers of each entity the subject of the applicable financial statements audit; and
- ii. representations and certifications given by or on behalf of Gunns Ltd, its controlled entities (including GPL) and the respective directors and officers of each entity the subject of the applicable financial statements audit;

Particulars

The representations and certifications include the representation letters given by Gunns Ltd in connection with the audits as follows:

<i>Financial Year</i>	<i>Date of letter</i>	<i>Issued by</i>
<i>2003</i>	<i>17 September 2003</i>	<i>Cross-Claimant and the Third Cross-Defendant on the Fourth Cross-Claim</i>
<i>2004</i>	<i>22 September 2004</i>	<i>Cross-Claimant and the Third Cross-Defendant on the Fourth Cross-Claim</i>
<i>2006</i>	<i>29 September 2006</i>	<i>Cross-Claimant and the Third Cross-Defendant on the Fourth Cross-Claim</i>
<i>2007</i>	<i>28 September 2007</i>	<i>Cross-Claimant and the Third Cross-Defendant on the Fourth Cross-Claim</i>
<i>2008</i>	<i>3 September 2008</i>	<i>Cross-Claimant and the Third Cross-Defendant on the Fourth Cross-Claim</i>
<i>2009</i>	<i>28 September 2009</i>	<i>Cross-Claimant and the Third Cross-Defendant on the Fourth Cross-Claim</i>

The representations and certifications include the representation letters given by GPL in connection with the audits as follows:

<i>Financial Year</i>	<i>Date of letter</i>	<i>Issued by</i>
2003	17 September 2003	<i>Cross-Claimant and the Third Cross-Defendant on the Fourth Cross-Claim</i>
2004	15 September 2004	<i>Cross-Claimant and the Third Cross-Defendant on the Fourth Cross-Claim</i>
2005	23 September 2005	<i>Cross-Claimant and the Third Cross-Defendant on the Fourth Cross-Claim</i>
2006	19 September 2006	<i>Cross-Claimant and the Third Cross-Defendant on the Fourth Cross-Claim</i>
2007	27 September 2007	<i>Cross-Claimant and Mr John Ewing (Administration and Compliance Manager)</i>
2008	30 September 2008	<i>Cross-Claimant and the Third Cross-Defendant on the Fourth Cross-Claim</i>
2009	30 September 2009	<i>Cross-Claimant and the Third Cross-Defendant on the Fourth Cross-Claim</i>

Further particulars may be provided after discovery and evidence.

- (II) otherwise do not admit the allegations in paragraph 82(h)(xi);
 - (K) repeat their response at sub-paragraph 1(b)(ii)(J) above and otherwise do not admit the allegations in paragraph 82(h)(xiv);
 - (iii) repeat the defences raised in paragraphs 107-109 of the KPMG ACLR;
 - (iv) otherwise deny the allegations in sub-paragraph (i).
2. In answer to paragraph 2, the Ninth and Tenth Cross-Defendants:
- (a) deny the allegations in paragraph 2, insofar as it contains allegations against them;

- (b) further, if (which is denied) they are liable for the same damage and to make contribution as pleaded in paragraph 2, then they:
 - (i) repeat the facts and matters raised in:
 - (A) paragraphs 104-106 of the KPMG ACLR; and
 - (B) for the purposes of this Cross-Claim Response only, paragraphs 1, 2(a), 2(b) and 3 of section C of the First Cross-Claim Commercial List Cross-Claim Statement filed by the Ninth and Tenth Cross-Defendants (as Cross-Claimants) on 20 July 2018,

concerning the responsibility of others for the same loss or damage;
 - (ii) say that the Cross-Claimant and other parties referred to in the paragraphs pleaded in sub-paragraph (i) above have primary responsibility for any loss and damage of the kind pleaded in paragraph 103 of the ACLS;
 - (c) do not plead to the allegations in paragraph 2 insofar as it makes allegations against the other Cross-Defendants, but they do not thereby admit those allegations.
3. In answer to paragraph 3, the Ninth and Tenth Cross-Defendants:
- (a) deny the allegations in paragraph 3, insofar as it contains allegations against them;
 - (b) further, if (which is denied) they are liable for the same damage and to make contribution in equity as pleaded in paragraph 3, then they:
 - (i) repeat the facts and matters raised in:
 - (A) paragraphs 104-106 of the KPMG ACLR; and
 - (B) for the purposes of this Cross-Claim Response only, paragraphs 1, 2(c) and 3 of section C of the First Cross-Claim Commercial List Cross-Claim Statement filed by the Ninth and Tenth Cross-Defendants (as Cross-Claimants) on 20 July 2018,

concerning the responsibility of others for the same loss or damage;
 - (ii) say that the Cross-Claimant and other parties referred to in the paragraphs pleaded in sub-paragraph (i) above have primary

responsibility for any loss and damage of the kind pleaded in paragraph 103 of the ACLS;

(c) do not plead to the allegations in paragraph 3 insofar as it makes allegations against the other Cross-Defendants, but they do not thereby admit those allegations.

4. In answer to paragraph 4, the Ninth and Tenth Cross-Defendants deny that the Cross-Claimant is entitled to the relief set out in the Cross-Summons dated 30 August 2018 against the Ninth and Tenth Cross-Defendants.

D QUESTIONS APPROPRIATE FOR REFERRAL TO A REFERREE

None.

E MEDIATION STATEMENT

A mediation has not yet taken place in the proceedings. The Ninth and Tenth Cross-Defendants are willing to proceed to mediation at an appropriate time. The Fourth Cross-Claim should be mediated at the same time as the principal claim.

SIGNATURE OF LEGAL REPRESENTATIVE

Signature



Capacity

Solicitor for the Ninth and Tenth Cross-Defendants

Date of signature

14 September 2018